

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS CAUSE NO. 031 OF 2024

1. KATONGOLE ABDALLAH
2. ABDUL MUWONGE
3. DAUDA KIGGUNDU
4. DARAWUSI KIBUUKA ::::::::::::::::::::::::::::::::::::::: APPLICANTS
5. KAGUDE NUUHU
t/a GAYAZA MASJID JAAMIA

VERSUS

HAJJI ALI KASOLO ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.

Introduction;

1) This is an ex parte application brought under Order 1 Rule 8 of the Civil Procedure Rules SI 71-1 as amended and Rule 2 of the Civil Procedure (Amendment) Rules SI No. 33 of 2019 seeking orders that;

1. The Applicants, namely; KATONGOLE ABDALLAH, ABDUL MUWONGE, DAUDA KIGGUNDU, DARAWUSI KIBUUKA AND KAGUDE NUUHU, be granted leave to file a representative suit

against the respondent on behalf of the Applicants and over 26 numerous other persons who are Muslims of Gayaza named in the list attached to the affidavit of DAUDA KIGGUNDU, the intended plaintiffs are trading as an association known as Gayaza Masjid Jaamia.

2. Costs of the application be provided for;

Background;

- 2) The respondent donated land as a gift *inter vivos* to the Muslim community of Gayaza within Bulamu Deputy LC1 measuring 33ft X 36ft and immediately after the said donation in 2004, the Muslims of Gayaza who include the Applicants and 26 others in excess built a mosque known as Gayaza Masjid Jaamia which has been in existence to date.
- 3) That in 2017 the Muslims of Gayaza realised that the instruments confirming the donation which were executed on the 18th January 2004 and later on 15th September 2011 had not been signed by the representatives of Gayaza Muslim Community or the representatives of the Muslim community of Gayaza Masjid Jaamia.
- 4) To rectify the lacuna, the parties on the 15th day of September 2017 executed a proper gift deed between Hajji Ali Kasolo as

donor and on behalf of the Muslims of Gayaza as donee, Darausi Kagaluka, Hajat and Safina Najibu and registered it to give the gift intervivos legal enforcement.

- 5) That the Applicants were shocked to discover a letter by the Respondent to the Supreme Mufti at Kibuli dated 24th April 2020 purporting to revoke the previously executed deed/ instrument of gift intervivos donating the land, changing the name of the mosque, the management and transferring ownership of the mosque contrary to the constitution of the Muslims of Gayaza.

Applicants' evidence;

- 6) The number of persons of the Muslims of Gayaza to be represented is over 26 and they have authorised the Applicants to represent them. A copy of the authorisation is attached on the affidavit in support of the application.
- 7) That the people to be represented have similar claims/interests and seek the same reliefs.
- 8) That it's in the interest of justice that this order should be granted and also to avoid multiplicity of suits in respect of pursuing similar interest against the intended defendant.

Representation;

9. The Applicants were represented by Mr. Kibuuka Rashid of M/s Jingo, Ssempijja & Co Advocates.

Issues for determination;

Whether the applicants have satisfied the conditions precedent for granting leave to file a representative suit?

Resolution and Determination of the Issue;

10. Order 1 Rule 8 of the Civil Procedure Rules provides that;

One person may sue or defend on behalf of all in same interest.

- i) *A person may institute a representative suit on behalf of all plaintiffs or all defendants, as the case may be, who have the same actual and existing interest in the subject matter of the intended suit, for the benefit of all.*
- ii) *An application for a representative order shall be made by an intending plaintiff or defendant who intends to represent all plaintiffs or all defendants for the benefit of all as the case may be, who have the same actual and existing interest in the subject matter of the intended suit.*

11. Before the court grants an order for a representative suit, the applicant shall satisfy the Court that –

- a) *All the plaintiffs or defendants, as the case may be, have an actual and existing interest in the subject matter of the intended suit;*
- b) *All the persons represented have authorized the applicant to sue or defend in the suit, and the authorization shall be in writing duly signed by the represented persons; and*
- c) *The application is brought with a proposed plaint or defense, as the case may be, showing –*
 - i. *A list of all persons so represented; and*
 - ii. *That all persons so represented have the same actual and existing interest in the suit.*

12. Subject to sub rule (2), the court shall, in such case, give notice of the institution of the suit to all such persons either by personal services or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court may in each case direct.

13. Any person with the same interest wishing to be made a party to a representative suit may apply to the court to be made a party to the suit.

[Handwritten signature]

14.For purpose of this rule, “a representative action” means a suit in which there are numerous persons having the same interest in one suit and where one or more of such persons, may, with the permission of the court, sue or be sued or may defend in the suit on behalf of or for the benefit of all persons interested.”

15.The effect of this provision is that where there are several persons sharing the same interest, the parties who have been authorized to represent those persons in the suit should be granted permission from the Court to institute a representative suit. **(See Mugisha Enos & 7 others versus Kyotera District Land Board Misc. Cause No. 01 of 2021)**

16.The Applicants and over 26 more others are members of Gayaza Masjid Jaamia Muslim community a community based organisation that was gifted land by the Respondent hence they all have the same interest in the subject matter which is to protect the land on which the mosque is situate.

17.The 26 and others at large who are the intended plaintiffs signed an authorization giving the applicants authorization to obtain permission from Court to institute a representative suit.



18.Therefore, I find that the application has passed the test for the Applicants to be granted leave to file a representative suit.

19.On the issue of notice, Counsel for the Applicant invited this Honourable Court to disregard the requirement of notice because the 26 who intend to be represented have already signed the authorization and cited the authority of **Nyabahika Geoffrey & Anor versus The Registered Trustees of the Church of Uganda Misc. Application No. 150 of 2021.**

20.The cognizance of the notice is that the intended plaintiffs have indeed consented to the representation and also give notice to any other person who may be interested in joining the suit.

21.This is crucial because the subsequent outcome of the proceedings is binding on such parties and therefore one cannot feign ignorance of the same or dispute his or her consent.

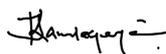
22.The authority relied on by Counsel for the Applicant is quite distinguishable because the applicants in that case personally appeared in open Court and confirmed the

representation which is not the case in the instant application therefore the same is inapplicable in the circumstances.

23.Therefore, each of the persons whose names are on the list attached to the application should be served with the notice of institution of the suit in accordance with Order 1 rule 8 (4) of The Civil Procedure (Amendment)Rules.

24.The notice shall be served by way of public advertisement and the same must contain the following;

- i) The notice should explicitly state the nature of the claim and the reliefs sought.
- ii) List all the names of the persons to be represented
- iii)The names of the Advocates and the address of service for purposes of the suit.
- iv)The notice should also contain the date of issuance and show the provisions under which this notice has been issued.
- v) The Applicants should endeavour to return service to this Honourable Court.



25.This application is allowed in accordance with the aforesaid terms with no order as to costs.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

18/03/2024